

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
CENTRAL OHIO JOINT FIRE DISTRICT)	File No. 0005023518
)	
Request for Waiver to Operate Vehicular)	
Repeaters on Federal Frequency 172.225 MHz)	

ORDER

Adopted: May 1, 2014**Released: May 2, 2014**

By the Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. The Central Ohio Joint Fire District (COJFD) has filed an application to modify public safety Station KBL388, Centerburg, Ohio, and a request for waiver to use frequency 172.225 MHz for mobile repeaters,¹ which are also known as vehicular repeaters. Specifically, this frequency is allocated for Federal use.² COJFD invokes Section 337(c) of the Communications Act of 1934, as amended (the Act) to request waiver of “any applicable FCC rules.”³ COJFD requests this frequency because “the equipment to be used requires a frequency 10 MHz separated from their operational frequencies ... in the 150-160 MHz band.”⁴ For the reasons discussed below, we deny the waiver request.

II. BACKGROUND

2. COJFD states that having vehicular repeaters “will significantly increase and improve ‘on-scene’ information exchange and interoperability, thus improving fire suppression and safety of life and property operations[,] which is certainly in the public interest.”⁵ COJFD asserts that “staying in this VHF frequency band means firefighters and command personnel only have to carry one hand-held radio to interoperate, rather than multiple radios [if] a different band is utilized.”⁶ COJFD indicates its understanding that its “use of the frequency would be ‘secondary’ to Federal operations.”⁷ COJFD states that “the equipment to be used requires a frequency 10 MHz separated from their operational frequencies.”⁸ COJFD’s frequency coordinator, the Association of Public-Safety Communications Officials-International, Inc. (APCO), states that it “has performed an exhaustive search of available VHF

¹ File No. 0005023518 (filed Jan. 10, 2012), attached Request for Waiver (Waiver Request).

² 47 C.F.R. § 2.106, Table of Frequency Allocations.

³ 47 U.S.C. § 337(c). *See* Waiver Request at 1.

⁴ *See* Waiver Request at 2. COJFD’s operational frequencies are 154.280, 154.295, and 154.325 MHz under call sign KBL388. *Id.*

⁵ *Id.* at 2.

⁶ *Id.*

⁷ *See* File No. 0005023518, attached letter from Chief Joseph Porter, Central Ohio Joint Fire District to Public Safety and Homeland Security Bureau, Federal Communications Commission (dated Jan. 25, 2012) at 2.

⁸ Waiver Request at 2.

high band frequency resources and cannot recommend a frequency which would be normally available to this applicant, and is compatible with the frequency separation requirements posed by Pyramid [Pyramid Communications, Inc.].”⁹

3. On August 29, 2012, the Public Safety and Homeland Security Bureau (Bureau) placed COJFD’s request on public notice.¹⁰ The Bureau received supporting comments from the Ohio APCO Frequency Advisor (Ohio APCO), neutral comments from the Enterprise Wireless Alliance (EWA), and opposing comments from the Forestry Conservation Communications Association (FCCA).¹¹ EWA takes no position on the waiver request, but it urged the Commission to address the broader issue of vehicular repeater spectrum by acting expeditiously on a Petition for Rulemaking filed by Pyramid.¹²

4. FCCA states that the Commission found in another waiver decision with Pyramid equipment that “optional filters could reduce the required frequency spacing [from ten megahertz] down to two megahertz.”¹³ Thus, FCCA argues that “the Commission must require COJFD to demonstrate that there are no public safety frequency assignments available to it in the 150-160 MHz band”¹⁴ On October 15, 2012, COJFD filed a letter addressing the feasibility of frequencies in the 150-160 MHz band using only a two-megahertz separation.¹⁵ COJFD notes that it operates regularly on several other frequencies in the 150-160 MHz band through contract and mutual aid agreements with agencies in four counties.¹⁶ COJFD provides a list of these frequencies that “fill the 150-160 MHz range not allowing us a 2 MHz spread.”¹⁷ As a result, COJFD contends that “the 150-160 [MHz band] is not available to COJFD to maintain a 2 MHz spread for vehicle repeaters, since we may be using any of the above frequencies at any given time.”¹⁸

5. We note that on April 3, 2013, the National Telecommunications and Information Administration (NTIA) filed a letter recommending that the Commission deny the Pyramid Petition in

⁹ See File No. 0005023518, attached Letter from Steven J. Makky, Sr., Staff Engineer, APCO International, to Federal Communications Commission (dated Jan. 5, 2012) at 1.

¹⁰ See Public Safety and Homeland Security Bureau Seeks Comment on Central Ohio Joint Fire District Request for Waiver to Operate Vehicular Repeater Units on a Federal Frequency, *Public Notice*, 27 FCC Rcd 10262 (PSHSB 2012) (*Public Notice*).

¹¹ See Comments of the Ohio APCO Frequency Advisor, dated September 17, 2012 (Ohio APCO Comments); Comments of Enterprise Wireless Alliance, dated September 19, 2012 (EWA Comments); Comments of Forestry Conservation Communications Association, dated September 19, 2012 (FCCA Comments).

¹² *Id.* at 2-3. See Modification of Sections 90.20(d)(34) and 90.265 of the Commission’s Rules to Facilitate the Use of Vehicular Repeater Units, RM-11635, Petition for Rule Making, filed by Pyramid Communications, Inc. (filed Aug. 16, 2011).

¹³ FCCA Comments at 3 *citing* Wayne County Sheriff Department, *Order*, 27 FCC Rcd 8167, 8170 ¶ 10 (PSHSB PLD 2012).

¹⁴ FCCA Comments at 3.

¹⁵ See File No. 0005023518, attached Letter from Chief Joseph Porter, Central Ohio Joint Fire District, to Federal Communications Commission, Public Safety and Homeland Security Bureau (dated Oct. 12, 2012, filed Oct. 15, 2012) (October 2012 Letter).

¹⁶ *Id.* at 1.

¹⁷ *Id.* at 1-2.

¹⁸ *Id.* at 2.

part with respect to nine Federal channels, including frequency 172.225 MHz.¹⁹ NTIA noted that the U.S. Department of Agriculture and the U.S. Forest Service make extensive use of these channels.²⁰ NTIA states that because the Forest Service supports critical public safety operations, NTIA needs to ensure an interference-free environment.²¹ NTIA opposes even secondary status for public safety users because public safety services should not be placed at risk by creating conflicts with primary Federal safety operations, and neither group will want to face interference or other coordination conflicts during an operation.²² On September 16, 2013, the Commission released an *Order and Notice of Proposed Rulemaking (Order and NPRM)* that denied the portion of Pyramid's Petition that sought to initiate a rulemaking proceeding to allow vehicular repeaters on the nine Federal channels, including frequency 172.225 MHz.²³

6. We treat COJFD's proposal as a request for waiver of Section 90.265(c) of the Commission's rules.²⁴ Frequency 172.225 MHz is available for non-Federal, forest firefighting use only in areas west of the Mississippi River.²⁵ COJFD is located east of the Mississippi River, where the frequency is allocated for Federal use. Applications for forest firefighting and conservation channels must be accompanied by a letter of concurrence from the United States Department of Agriculture.²⁶ COJFD's application lacks such concurrence.

III. DISCUSSION

7. *Statutory Waiver Standard.* Section 337(c) of the Act provides that, in connection with an application by an "entity seeking to provide public safety service," the Commission "shall waive any requirement of this Act or its regulations implementing this Act (other than its regulations regarding harmful interference) to the extent necessary to permit the use of unassigned frequencies for the provision of public safety services ..." if the Commission finds that:

- "no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use;"
- "the requested use is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission's regulations;"
- "the use of the unassigned frequency for the provision of public safety services is consistent with other allocations for the provision of such services in the geographic area for which the application is made;"

¹⁹ See Letter from Karl B. Nebbia, Associate Administrator, Office of Spectrum Management, National Telecommunications and Information Administration, to Julius Knapp, Chief, Office of Engineering and Technology, Federal Communications Commission, RM-11635 (dated April 3, 2013) (NTIA Letter).

²⁰ *Id.* at 2.

²¹ *Id.*

²² *Id.*

²³ Amendment of Sections 90.20(d)(34) and 90.265 of the Commission's Rules to Facilitate the Use of Vehicular Repeater Units, PS Docket No. 13-229, RM-11635, *Order and Notice of Proposed Rulemaking*, 28 FCC Rcd 13544, 13550-51, ¶ 19 (2013) (*Order and NPRM*).

²⁴ 47 C.F.R. § 90.265(c). See also 47 C.F.R. § 2.106 footnote US8.

²⁵ 47 C.F.R. § 90.265(c)(4).

²⁶ 47 C.F.R. § 90.265(c)(6).

- “the unassigned frequency was allocated for its present use not less than 2 years prior to the date on which the application is granted; and”
- “granting such application is consistent with the public interest.”²⁷

8. When considering requests under Section 337, we must first find that the applicant is an “entity seeking to provide public safety services.”²⁸ COJFD is a joint fire district formed March 16, 2000 and serves the Village of Centerburg, Hilliar Township, Liberty Township, Milford Township, and South Bloomfield Township, Ohio.²⁹ Based on the record and COJFD’s status as a licensee in the Public Safety Pool, we conclude that COJFD is an entity seeking to provide public safety services. We next turn to the criteria under Section 337(c). We note that an applicant’s failure to satisfy a single criterion of Section 337(c) constitutes sufficient cause for the Commission to deny a request for waiver.³⁰ As we discuss below, we find that COJFD has not satisfied the second criterion of Section 337(c).

9. Under the second criterion, the Commission must find that the requested use is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission’s regulations. Regarding spectrum users entitled to protection from such interference, NTIA states,

“NTIA reviewed the federal agency spectrum usage on the frequencies 170.425, 170.475, 170.575, 171.425, 171.475, 171.575, 172.225, 172.275, and 172.375 MHz. We also conferred with the U.S. Department of Agriculture (USDA), the heaviest user of these frequencies. The U.S. Forest Service of the USDA uses these frequencies for normal operations by forest rangers, for conservation, and for forest firefighting when necessary. The Forest Service makes use of the nine frequencies listed above. Our records show that the Forest Service has 1,288 frequency authorizations throughout the United States and its possessions. Furthermore, twenty-two of these authorizations are national in scope, with operations authorized anywhere in the United States and its possessions. Because the Forest Service supports critical public safety operations, we need to ensure that we avoid interference. The proposal by Pyramid creates the potential for conflicts in spectrum use where public safety is at stake.”³¹

10. While we always consider the particular circumstances of each waiver request we analyze, we find that NTIA’s opposition and the Commission’s subsequent *Order and NPRM* apply directly to COJFD’s request due to frequency 172.225 MHz. COJFD has not adequately addressed the considerations fundamental to NTIA’s opposition or to the Commission’s decision. COJFD states that “it is technically feasible and there are no other users in Ohio on or near this frequency to receive interference, harmful or otherwise.”³² It does not support this assertion. For example, we note that the

²⁷ 47 U.S.C. § 337(c).

²⁸ *Id.* Section 337(f) defines the term “public safety services” as “services- (A) the sole or principal purpose of which is to protect the safety of life, health, or property; (B) that are provided— (i) by State or local government entities; or (ii) by non-government organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and (C) that are not made commercially available to the public by the provider.” 47 U.S.C. § 337(f).

²⁹ Waiver Request at 1.

³⁰ See Implementation of Sections 309(j) and 337 of the Communications Act of 1934, as amended, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 99-87, 15 FCC Rcd 22709, 22768-69 ¶ 131 (2000) (footnotes omitted); *In the Matter of County of Marin, California*, 22 FCC Rcd 9165, 9167 (PSHSB 2007).

³¹ NTIA Letter at 2.

³² Waiver Request at 3.

Forest Service has 22 authorizations that are national in scope, and COJFD's use of the frequency would be co-channel with the Forest Service inside its authorized service area. The Commission cannot make the finding that the requested use is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission's regulations. Because COJFD fails to satisfy the second criterion, we deny the waiver under Section 337(c) of the Act.

11. *The Commission's Waiver Standard.* For these same reasons, we also conclude that COJFD has failed to justify a waiver pursuant to the Commission's waiver standard, Section 1.925 of the Commission's rules, which states that in order to obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the existing case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.³³

12. We first analyze COJFD's request under the first prong of Section 1.925(b)(3). The purpose of the designation for non-Federal use of frequency 172.225 MHz in areas west of the Mississippi River is maintain geographic separation for Federal users of this frequency, so they may use the frequency in areas east of the Mississippi River.³⁴ As we discussed above in the Section 337(c) analysis, COJFD's use of frequency 172.225 MHz would be co-channel with the Forest Service inside its authorized service area. Thus, a waiver would contravene the purpose of the geographic rule. We find that application of Section 90.265(c)(4) would serve the purpose of the rules because it would prevent COJFD from causing harmful interference to Federal operations. We also note that in 2005, the Commission established Section 90.265 to better reflect forest firefighting and conservation channels' status as part of the Federal band.³⁵ As part of Section 90.265(c), the Commission required that applications for the use of the forest firefighting and conservation channels be accompanied by a letter of concurrence by the sponsoring Federal agency.³⁶ The Commission adopted this practice to aid the coordination of assignments between NTIA and the Commission.³⁷ In light of NTIA's opposition to the Pyramid Petition for Rulemaking, combined with the Commission's decision to deny vehicular repeater use of forest firefighting channels including frequency 172.225 MHz,³⁸ we find that a waiver of the Federal agency concurrence requirement would contravene the purpose of the rule. COJFD has not shown that the underlying purposes of Section 90.265 would not be served or would be frustrated by application to the instant case.

13. Next, we analyze COJFD's request under the second prong of Section 1.925(b)(3). COJFD has not shown that in view of the unique or unusual factual circumstances of the existing case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the COJFD has no reasonable alternative. Rather, we find COJFD has the alternative to apply for any

³³ 47 C.F.R. § 1.925(b)(3).

³⁴ The rules designate four other channels for non-Federal use in areas east of the Mississippi River, so a non-Federal user can choose from a designated group of forest firefighting channels depending on whether the user is located east or west of the Mississippi River. 47 C.F.R. § 90.265(c)(5).

³⁵ Amendment of Parts 2 and 90 of the Commission's Rules to Provide for Narrowband Private Land Mobile Radio Channels in the 150.05-150.8 MHz, 162-174 MHz, and 406.1-420 MHz Bands that are Allocated for Federal Government Use, ET Docket No. 04-243, *Report and Order*, 20 FCC Rcd 5793, 5816 ¶ 57 (2005) (*Federal Narrowbanding R&O*).

³⁶ *Id.* at 5816 ¶¶ 57-58. See also 47 C.F.R. § 90.265(c)(6).

³⁷ *Federal Narrowbanding R&O* at 5816 ¶ 58.

³⁸ See *Order and NPRM*.

non-Federal Part 90 frequency in the VHF band and seek waiver of applicable rules if necessary. Moreover, we find application of the rules would not be contrary to the public interest because it would protect the USDA and the Forest Service's forest ranger, conservation, and forest firefighting operations from harmful interference.

IV. CONCLUSION

14. We find that COJFD fails to meet the second prong of Section 337(c) of the Act and both prongs of Section 1.925(b)(3) of our rules to obtain a waiver of Section 90.265. Accordingly, we deny the waiver request.³⁹

V. ORDERING CLAUSES

15. Accordingly, WE ORDER that pursuant to Sections 4(i) and 337(c) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 337(c), and Section 1.925(b)(3) of the Commission's rules, 47 C.F.R. § 1.925(b)(3), the Request for Waiver filed by the Central Ohio Joint Fire District, on January 10, 2012, as amended, IS DENIED.

16. WE FURTHER ORDER that application File No. 0005023518 SHALL BE DISMISSED consistent with this Order and the Commission's rules.

17. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Beers
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

³⁹ By this action, we do not prejudge the outcome of the Pyramid Petition for Rulemaking, RM-11635.